

Minutes of the Board of Adjustment meeting held on Monday, June 8, 2009, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Wendell Coombs, Chair
Joyce McStotts, Vice-Chair
Connie Howard
Tim Tingey, Community & Economic Development Director
Ray Christensen, Senior Planner
Citizens

Excused: Rosi Haidenthaller
Jonathan Russell

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

APPROVAL OF MINUTES

Wendell Coombs asked for additions or corrections to the minutes of May 11, 2009. Joyce McStotts made a motion to approve the minutes as amended. Connie Howard seconded the motion.

Voice vote was taken. Minutes approved 3-0.

Mr. Coombs explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1379 – RICHARD & SHERRI BAIRD – 804 West Shadowwood Drive – Project #09-35

Richard and Sherri Baird were the applicants present to represent this request. Ray Christensen reviewed the location and request for a side yard setback variance and total side yard setback variance for an accessory structure in the side yard. The applicants are requesting a 1 foot setback on the east side yard and there is an existing 11 foot setback on the west side yard for a total side yard set back of 12 feet. The applicants are also requesting an 8 foot total side yard setback variance in order to have a total side yard setback of 12 feet. Murray City Code Section 17.100.090F states: Side Yard Accessory Buildings: Such buildings located in the side yard must comply with the setback requirements for dwellings. Murray Code Section 17.100.080 C states: Residential building lots in the R-1-8 zone shall meet the following minimum yard requirements: B. Side Yard: The minimum depth of one of the side yards of a residential dwelling is 8 feet and the total width of the two side yards shall not be less than 20 feet. The property is similar in size with other lots in the general area. The lot meets the general standards of the ordinance related to lot width, area, building height and setback. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray City Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance and recommends denial of the variance.

Wendell Coombs commented that the west side yard setback is 11 feet. Mr. Christensen responded that 8 feet is the minimum setback and a total of 20 feet between the two sides for interior lots.

Richard Baird, 804 West Shadowwood Drive, commented that the hardship is due to literal enforcement. He stated that they feel that they cannot remove the existing shed on the east side yard without interrupting electrical and gas services on the side of the home. He stated that to remove the shed would also destroy landscaping, sprinklers, fencing and the structure itself and they would encroach onto the neighbors property in order to remove the shed. Mr. Baird stated that the shed would be virtually useless and was designed specifically to the current location many years ago. He stated the shed is a critical asset to the property. He stated that removing the shed would be more of a problem than letting the shed remain. He stated a hardship due to special circumstances is a result of three years ago when they began to improve their home so that their adult handicap daughter could have her own independent living space in their basement and has been a good thing for her and them. A building permit was issued in August of 2006 and now they are needing follow up on the building permit to complete the project and in order to do so they hoped to extend the roofline over the stairways that goes down to their daughters apartment in the basement. Mr. Baird explained that at the time they were obtaining bids for the basement finish they also obtained bids on this addition and until just recently they were not aware that this addition would not meet the zoning regulations.

Sherri Baird stated that half the basement is an apartment for their handicap daughter and they are desirous to have this proposed addition to allow for storage space.

Richard Baird stated that a variance is essential to the enjoyment of their house, and in order for them to enjoy the same property rights as others in the area they need the shed because it is essential to their family, their organization, their storage space which is necessary and is a natural part of their home and blends very well with the brick. He stated the neighbors have no problem with the shed and they have a letter from the adjacent neighbor indicating their support for this variance request.

Sherri Baird stated that the landscaping is such that they only have one access to the rear yard even if the shed is removed.

Mr. Baird explained that the structure itself isn't big but it would be difficult to move and it is a well built structure and is adjacent to the home itself. He stated that when the contractors, Tuff Shed, constructed the shed they were not informed that the structure did not meet the zoning setback requirements but was small enough that a building permit was not required for the shed because it is 108 sq.ft. and they were not alerted that the shed was anything unusual in the neighborhood when it was installed. He stated they both grew up in Murray and wish to stay here in this home and it would be a hardship for them to be required to move the shed and would be a major setback to their plans for the property and the usefulness of their yard.

Connie Howard asked what year the shed was constructed. Mr. Baird responded that the shed was built more than 12 years ago and they have lived in the home for the past 19 years.

Connie Howard expressed concern with granting the variance because others would then ask for similar variances and it would set a precedent and that a one foot side yard setback would destroy everything the city is trying to do with conformity in every area of

Murray with requiring an 8 foot minimum side yard setback and a total of 20 feet for both sides.

Sherri Baird stated that they are believers in rules and regulations, somehow or other they were not aware or misunderstood the setback requirement when the shed was installed. She stated that there are a lot of city regulations and some make more sense than others. She stated that there are some dwellings that look messy because the occupants do not have sheds to store their items. She cited her neighbors' sheds that exist within one foot of the property line. Connie Howard clarified that the neighbor's sheds are located in the rear yards and not side yards.

Wendell Coombs stated one of the reasons for setback requirements is to provide separation from properties and dwellings and when a structure is built to the property line it provides for a fire/safety hazard.

Connie Howard stated that typically these issues arise, or are discovered, when a property owner applies for an addition or remodel to their home and some people build the structures without permits or city approvals. She stated that granting this variance would set a precedent and the board does not wish to set precedents, but if there is uniqueness to this property they could grant a variance. She stated there are many situations throughout the city where properties have sheds located in the side yards that are illegal. She stated that she is concerned with granting the variance because of the situation that the shed is adjacent to the home and extends to within one foot of the property line.

Wendell Coombs asked if the Baird's have investigated the possibility of disassembling the shed and relocating it. Mr. Baird responded that the design of the shed is one that leans up against the home and he has exhausted all those possibilities, including the utilities on the property and the way the door hangs on the shed, etc.

Sherri Baird stated that three years ago in 2006 when they started their remodel of their basement, nothing was indicated about the shed not meeting the setback regulations and they would like to get the basement remodel completed at this time. She stated that the basement remodel even allowed for a separate entrance for their handicap daughter and they worked hard so that the home will maintain its single family status and not be a separate basement apartment. Connie Howard stated that the basement finish would not have necessarily revealed that there was an illegal shed until possibly a field inspection was conducted.

Sherri Baird stated that there were site inspections associated with the basement remodel and nothing was indicated during that time with the issue of the shed. She stated the issue with the sheds noncompliance was recently discovered with this latest proposal to add onto the home at the front and rear.

Wendell Coombs complimented the Baird's on their maintenance and upkeep of their property and it is a beautiful property, however, the Board has certain guidelines and criteria they must follow. He stated if there is uniqueness or hardship associated with this property the Board could possibly grant a variance, but that there does not appear to be any uniqueness or hardship. He stated even though there may be a lot of illegal structures, that is not justification of granting a variance. He stated the Board is not a legislative body and cannot change the zoning laws, but is bound by the zoning laws. He stated that once a precedent is set, the Board may get numerous similar variance requests.

Mr. Christensen commented that many applications are made for building permit such as an interior remodel, that the accessory structures are not shown on the building permit site plan; therefore the issue of the illegal shed is sometimes not detected and possibly that is why the Baird's shed was not discovered until recently. Mr. Christensen indicated that newer computer programs are used whereby aerial photos can show the existing property and structures relating to meeting setback regulations.

Mr. Baird stated that they started the process for this addition based on the previous approvals believing that their property was complying with all zoning regulations and they have also installed subsequent landscaping in the mean time. He stated now that it has been three years since they started their remodel with the basement, they can't complete this portion due to the issue with the shed.

Connie Howard stated there is shared responsibility with the construction projects both from the city and the property owner to ensure that it meets the city regulations and required permits.

No comments were made by the public.

Wendell Coombs stated that there is an unusual amount of illegal structures throughout this area and it is a lack of knowledge on the home owner's part. He stated that there is better technology now that allows from a satellite to see what property looks like, but it is part the home owner's responsibility to check with the city for any regulations and required permits. He stated that the Board is limited on what they can approve based on state law and that the Board empathizes with property owners.

Connie Howard made a motion to deny the variance requested based on the denial would keep the literal enforcement of the land use regulations in Murray; that this property is of a standard similar size in the general area and doesn't have special circumstances; that generally the other properties in the area meet the setback requirements but there appears to be other structures that are noncompliant. In keeping with the literal enforcement of the zoning in Murray we need to continue to deny the request. This is contrary to the public interest if the variance were to be granted given that it would allow a one foot side yard setback which is very much what Murray is trying to get away from. That the variance on this site would not be keeping with the spirit of the land use ordinance with accessory buildings. Seconded by Joyce McStotts.

Call vote recorded by Ray Christensen.

 A Ms. Howard
 A Ms. McStotts
 A Mr. Coombs

Motion passed 3-0.

Joyce McStotts made a motion to approve the Findings of Fact as written for Case #1379, Richard & Sherri Baird. Seconded by Connie Howard

Call vote recorded by Ray Christensen.

 A Ms. Howard
 A Ms. McStotts
 A Mr. Coombs

Motion passed 3-0.

CASE #1380 – DAVID & YVONNE ROBINSON – 6106 South Mt. Vernon Drive - #09-36

David and Yvonne Robinson were the applicants present to represent this request. Ray Christensen reviewed the location and request for a side yard setback variance and lot coverage for the property located at 6106 South Mt. Vernon Drive. Murray City Code Section 17.100.080 states: Residential building lots in the R-1-8 zone shall meet the following minimum yard requirements: B. Side Yard: The minimum depth of one of the side yards of a residential dwelling is 8 feet and the total width of the two side yards shall not be less than 20 feet. Murray City Code Section 17.100.130 states: All buildings, including accessory buildings, shall not cover more than 35% of the area of the lot. The applicants are requesting side yard setback variances and lot coverage variances for the property. The zoning regulations allow 35% lot coverage; whereas the applicants are requesting 38.7% lot coverage and the minimum required total side yards setback is 20 feet with a minimum side yard setback of 8 feet. The applicant is proposing total side yard setbacks of 12.69 feet and a minimum of 5 feet on one side and 7.69 feet on the other side yard. The current side yard setback total is 18 feet 3 inches. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray City Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance and recommends denial of the variance.

David Robinson, 6106 South Mt. Vernon Drive, stated that they are proposing to remove the existing shed which is built on the property line. He stated the intent is to build storage underneath the deck addition and then the existing shed would no longer be needed. He stated they would like to build a shed in the rear yard that would be in compliance with city regulations.

Connie Howard asked about the coverage limitation. Mr. Robinson responded if the deck is not covered, they can meet the 35% total lot coverage, but they would like to cover the deck which would then make the coverage 38.7%.

David Robinson stated that he is not the original owner of the home and the home is nonconforming to the side yards setbacks. He stated that there are four homes across the street that have added garages and two of them requested variances. His adjacent neighbor also received a variance to construct a garage. He stated that Brian and Julie Oldham, neighbors across the street, indicated that they received a variance on July 10, 1995 for a 19 foot wide garage and a 6 foot setback on one side and 10 foot setback on the other side for a total of 16 feet total side yards. He stated that the neighbors that have had variances granted varied from 3'6" to 5' side yard setbacks. He stated that their neighborhood has had similar variances granted in the past. He stated their existing deck is not covered, but they are desirous to cover the deck to provide some type of weather protection and provide better maintenance.

Joyce McStotts asked if they desire to expand onto the garage as well as an addition to the rear of the home. Mr. Robinson responded that they are desirous to convert the existing one-car carport into a two-car garage.

Joyce McStotts expressed concern that there is a 4 foot difference between the 16 foot total side yard of the neighbors and the 12 foot total side yard setbacks that the Robinson's are requesting. Mr. Robinson stated there is 15 foot separation between his home and the neighbor's home to the north.

Wendell Coombs clarified that the Robinson's are adding five of feet width to the carport in order to convert the carport to a two-car garage.

Marvin Goeckeritz, 6116 Mt. Vernon Drive, stated he is the adjacent neighbor to the south. He stated he received a variance for a setback of 8 feet on one side of the property and 4 feet on the other side in order to convert his carport into a garage. He stated that he has not done the construction at this time due to the recession and funding. He stated that the Robinson's have money to do their addition and are ready to go and it would also employ other people. He stated the Robinson's request would help beautify the neighborhood and that a double car garage is nice for security reasons and the neighborhood has similar setbacks throughout. He stated that he is in favor of the variance request. He stated there is only one home with a carport in the neighborhood and all the other homes have had their carports converted into garages similar to this request of the Robinson's.

John Brantly, 6100 South Mt. Vernon Drive, stated that he has a one car carport. He stated that the Robinson's carport is very difficult to negotiate a vehicle so as not to hit the adjacent car and there is a drop off of about 3 feet to the south side of the carport and they run the risk of driving off of the edge. He stated that the Robinson's are a tremendous asset to the neighborhood and a lot of the structure has been built for accommodating their children and to be able to entertain. He stated the Robinson's have offered to remove the shed in order to get the variance. He asked when the 35% coverage requirement was adopted. Mr. Christensen responded the setback and coverage regulations go back to approximately the 1970's.

Mr. Brantly stated that in order for the Robinson's driveway to be a safe and functioning driveway, a variance would be necessary. He stated that if the storage is in the back of the house it would meet the 35% coverage requirement.

Jim Heusser, 5989 South 620 East, stated his home is to the rear of Robinson's. He stated that the Robinson's are the greatest neighbors in the world. He stated that if the variance is granted, it will improve the lot 100% and they will be able to enjoy a garage as opposed to having a carport which will enhance the neighborhood. He stated he is in favor of the variance.

James Carroll, 455 East 400 South #403, Salt Lake City, stated he is the architect for this proposal. He stated the main objective for the Robinson's was to be able to have a two-car garage. This proposal is a minimal two-car garage, which is a standard 16' wide overhead door. He stated they could not encroach further into the side yard than the 5 feet due to a utility easement as well as fire protection. Mr. Carroll stated the second objective of the Robinson's was to add the living space for their family to enjoy along with some sort of a deck to replace the deck off the back of the house. He stated the deck could be on grade with no storage underneath and possibly having another storage shed in the rear yard and removing the nonconforming lean-to on the side of the home. Through discussions with him, the Robinson's and the contractor, it made more sense to add the storage area under the deck. He explained they would be raising the deck up off of the ground level and put additional basement space underneath. This would not take anymore space from landscaping and would keep as much rear yard space as possible and not having any additional storage sheds in the rear yard. He stated the intent of the ordinances is to keep as much open space on the property.

Connie Howard asked how much of the structure would need to be removed in order to maintain the 35% coverage limitation. Mr. Carroll responded it is equal to the deck which is being added onto the south side of the home and the deck could be on grade

and is equal to the area of the shed (3.7%) on the side of the home. This would also bring the property more into compliance with out the large lean to on the north side of the home.

Mr. Robinson responded if the deck was merely on grade and no roof, the property would be in compliance to the 35% coverage.

Wendell Coombs asked if the deck is elevated with storage underground, would it meet the coverage requirements. Mr. Christensen responded that if the deck is elevated it will need to meet the setback and coverage requirements.

Mrs. Robinson commented that they have a walk out basement. She stated that the lean-to be built in one day while they were out of town and was attached to the home and it was not their original intent to have it constructed as it exists. She stated the builder constructed the shed as it exists, but was not how they originally had planned. She stated that they have had problems with the storage under the deck that comes out of the back of their home. They have tried new inventions of shelves, sealants, etc. but the weather is quite intrusive in this particular area. She stated when the idea was presented of moving the deck, it made sense to extend it and would be lasting due to weather conditions, etc.

Wendell Coombs closed the public comment portion for this item. Mr. Coombs stated that the staff did receive phone calls from the following neighbors: Diana Simer, Susan Nevenner, and Brad Beel indicating they are in favor of granting the variance.

Wendell Coombs stated one of the mitigating factors is that the Board has granted additional variances in this neighborhood and right or wrong, it may be a hardship if they were not to grant a variance and would not be treating specific areas fairly. He stated if this were the only variance that had been requested and granted in this area, it would be easier to deny the request. But there does appear to have been variances granted in the past particularly regarding the setbacks. He stated that he can see a hardship associated with this request simply because there have been similar variances granted in this area and it appears a precedent has already been established. He stated that there is a 3 foot change in grade near the garage. He asked the width of the driveway. Mr. Robinson responded the driveway is currently 15 feet wide. Mr. Carroll indicated the driveway width would be widened closer to the garage but they would maintain the same width for the drive approach.

Mr. Coombs commented that it would be somewhat of a compromise by removing the shed, which is a safety factor, and extending the garage which would mitigate the change in grade.

Connie Howard stated the footprint of the home is a straight line with the deck on the side as opposed to the 3.7% increase in area coverage and would meet the rear yard setback of 15 feet for homes constructed prior to 1987.

Wendell Coombs stated this is a difficult decision and the Board looks at each neighborhood and property individually and tries to determine uniqueness. He stated this lot is not a flat lot and drops off substantially towards the rear and side. He asked the amount of square footage that equals the 3.7% coverage. Mr. Robinson responded it is approximately 170 sq.ft. Mr. Christensen responded the coverage is determined by the lots square footage, and the dwellings and accessory structure square footages cannot exceed 35%.

Connie Howard commented that 3% of 8,000 sq.ft. is 240 sq.ft. Mr. Robinson stated the storage shed is 216 sq.ft.

Connie Howard made a motion to grant the request for the side yard variance based on these five criteria: 1- The literal enforcement and the land use ordinance would be compromised because of the rulings by prior Boards of Adjustments which is very intricate to how they operate. There are people within this same neighborhood with similar house footprints and shape of the lots. 2- There are special circumstances for the side yard because the property does drop off and is a safety hazard. 3- Other people in the area are enjoying the same property rights with double stall garages. 4- The variance won't affect the general plan since everyone in the area seems to have the same situation. 5- The spirit of the land use ordinance is observed by granting the variance.

The variance request for the 38.7% lot area coverage (variance of 3.7%) is granted based on the rear yard setback is 19 feet, which is 4 feet more than the minimum requirement of 15 feet. She stated the diagram of the footprint of the addition to the home, as shown by the architect, is directly straight across and doesn't affect any part of the planning and zoning within Murray and satisfies the requirement "C", which is the "enjoyment of the property", the general plan, and meets the "spirit of the land use" in respect to the property.

Seconded by Joyce McStotts.

Call vote recorded by Ray Christensen.

<u>A</u>	Ms. Howard
<u>N</u>	Ms. McStotts
<u>A</u>	Mr. Coombs

Motion passed 2-1.

Wendell Coombs stated that the Findings of Fact will need to be rewritten and signed at a later date. Joyce McStotts made a motion to approve the Findings of Fact as modified in the motion. Seconded by Connie Howard.

Call vote recorded by Ray Christensen.

<u>A</u>	Ms. Howard
<u>A</u>	Ms. McStotts
<u>A</u>	Mr. Coombs

Motion passed 3-0.

OTHER BUSINESS

There was no other business.

Meeting adjourned.

Ray Christensen, AICP
Senior Planner